



October 28, 2002

Ms. Beverly W. Irizarry  
Gale, Wilson & Sanchez  
115 East Travis, Suite 618  
San Antonio, Texas 78205

OR2002-6111

Dear Ms. Irizarry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171282.

The Alamo Community College District (the "district"), which you represent, received a request for "[r]ecords from Chancellor Robert Ramsey which include: cell phone records, expense accounts, appointment calendars and legal bills going back five years (1997-2002)." You inform us that the request for legal bills has been withdrawn. You claim that information contained in the requested cell phone records, expense accounts, and appointment calendars is excepted from disclosure under sections 552.101, 552.107, 552.117, and 552.136 of the Government Code and the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. We have considered the exceptions you raise and have reviewed the information you submitted.<sup>1</sup>

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). Section 552.026 of the Government Code incorporates FERPA into chapter 552 of the Government Code. *See* Open Records Decision No. 634 at 6-8 (1995). Section 552.026 provides as follows:

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<sup>1</sup>This letter ruling assumes that the submitted representative sample information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district to withhold any information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D): Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026. "Education records" under FERPA are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 at 3 (1982), 206 at 2 (1978).

In Open Records Decision No. 634 (1995), this office concluded that: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 of the Government Code as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. *See* Open Records Decision No. 634 at 6-8 (1995).

In this instance, you state that the chancellor's appointment calendars contain student information that is confidential under FERPA. As you have submitted this information, we will determine whether FERPA is applicable to it. We have marked the type of information that is confidential under FERPA if it identifies a student. The district may release this information only if FERPA authorizes the district to do so.

The district also raises section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy encompasses the specific types of information that the Texas Supreme Court deemed to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other subjects also are private under section 552.101. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing types of information attorney general has found to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and

physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress).

You assert that references to medical appointments in the chancellor's appointment calendars are intimate and of no legitimate public interest. We conclude, however, that this information is not protected by common-law privacy. Therefore, the district may not withhold the information that relates to the medical appointments under section 552.101. *See also* Open Records Decision Nos. 444 at 4 (1986) (public will frequently have legitimate interest in personnel file information relating to public employees, and thus even highly intimate or embarrassing information generally will be open to public), 400 at 5 (1983) (information is protected from disclosure only if release would lead to clearly unwarranted invasion of employee's privacy), 336 at 2 (1982) (names of employees taking sick leave and dates of sick leave taken not excepted from disclosure under statutory predecessor).

The district also seeks to withhold information contained in the appointment calendars under section 552.107 of the Government Code. Section 552.107(1) excepts from public disclosure

information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct[.]

Gov't Code § 552.107(1). Section 552.107(1) protects information that comes within the attorney-client privilege. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and the client's communications made in confidence to the attorney. *See* Open Records Decision No. 574 (1990). Accordingly, these two classes of information are the only information that may be withheld pursuant to the attorney-client privilege under section 552.107(1).

You state that the appointment calendars contain highlighted references to meetings with the district's attorneys that are excepted from disclosure under section 552.107(1). We find, however, that the district has not demonstrated that any of the references to attorney meetings reveal either an attorney's legal advice or a client communication made in confidence to an attorney. We therefore conclude that none of the information in the appointment calendars that relates to meetings with attorneys is excepted from disclosure under section 552.107(1).

The district also raises section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure the home address, home telephone number, and social security number of a current or former official or employee of a governmental body, as well as information that reveals whether the person has family members, if the current or former official or employee requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 at 5-6 (1994), 455 at 2-3 (1987). This information may not be

withheld, however, if the current or former official or employee made the request for confidentiality under section 552.024 after the request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989).

You state that the requested cell phone bills and other documents contain home telephone numbers and other information that the chancellor has elected to keep confidential under section 552.024. We first note that the cell phone bills indicate that the chancellor's cell phone service is paid for by the district. A cell phone number that is provided to the chancellor at public expense may not be withheld from disclosure under section 552.117. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor not applicable to cellular mobile phone numbers provided and paid for by governmental body and intended for official use). With regard to the rest of the information that you seek to withhold under section 552.117, you do not state whether the chancellor had made his section 552.024 election when this request for information was received. Therefore, we conclude that to the extent that the highlighted information in the cell phone bills consists of personal telephone numbers that are not paid for by the district, the highlighted information is excepted from disclosure under section 552.117(1) if the chancellor timely elected to keep that information confidential under section 552.024. We also have marked other information relating to the chancellor that the district must withhold under section 552.117(1) if the chancellor made a timely election under section 552.024. Additionally, we have marked information involving persons other than the chancellor that may be excepted from disclosure under section 552.117(1). The district must withhold that information if it relates to a current or former official or employee of the district who timely requested confidentiality for the information under section 552.024.

The expense account records also contain driver's license and license plate numbers. Section 552.130 of the Government Code excepts from disclosure information that relates to

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1)-(2). We have marked driver's license and license plate information that appears in the expense account records. To the extent that the marked information relates to Texas driver's license or license plate numbers, it must be withheld from disclosure under section 552.130.

The district also raises Section 552.136 of the Government Code. This exception is applicable to certain account numbers. Section 552.136 provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked account number information in the cell phone bill and expense account records that the district must withhold under section 552.136.

Lastly, we note that the appointment calendars contain an e-mail address that the district may be required to withhold under section 552.137 of the Government Code. This exception provides as follows:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. We have marked an e-mail address that appears to belong to a private individual. If so, then the district must withhold the marked e-mail address under section 552.137 unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure.

In summary, the district may release the requested information that is subject to FERPA only if FERPA authorizes the district to do so. The district must withhold some of the information that relates to the chancellor under section 552.117(1) of the Government Code if the chancellor timely elected to keep that information confidential under section 552.024. Other marked information also may be excepted from disclosure under section 552.117(1) if that information relates to a current or former official or employee of the district who timely elected to keep the information confidential under section 552.024. The Texas driver's license and license plate numbers must be withheld under section 552.130. The

marked account number information must be withheld under section 552.136. The district must withhold the marked e-mail address under section 552.137 unless the person to whom the e-mail address belongs has affirmatively consented to its public disclosure. The rest of the requested information is not excepted from disclosure and must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

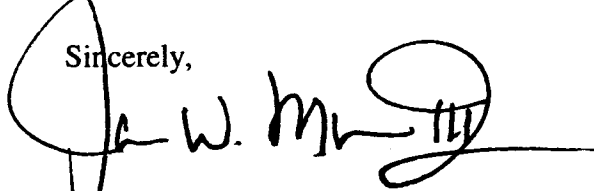
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Morris III", with a large, stylized initial "J" and a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 171282

Enc: Marked documents

c: Ms. McNelly Torres  
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(w/o enclosures)